

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILFREDO CRUZ and U.S. POSTAL SERVICE,
POST OFFICE, Chicago, IL

*Docket No. 99-306; Submitted on the Record;
Issued September 18, 2000*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly found that appellant was no longer entitled to continuing compensation due to wage loss beginning January 13, 1998, when he returned to full-time work at the same pay rate as his date-of-injury job.

On August 27, 1990 appellant, a letter carrier, sustained an injury while in the performance of his duties when a dog bit him. The Office accepted his claim for dog bite and also accepted several spinal conditions as work related. The Office authorized a lumbar laminectomy. Appellant received compensation for temporary total disability on the periodic rolls.

On August 23, 1997 appellant returned to limited duty six hours a day.

On January 5, 1998 appellant's attending physician, Dr. Sidney R. Cruz, a specialist in internal medicine, released appellant to full-time limited duty effective January 13, 1998. The employing establishment offered appellant a position within the restrictions specified by Dr. Cruz and on January 9, 1998 appellant accepted the offer.

In a decision dated March 18, 1998, the Office terminated appellant's compensation for wage loss because his actual wages met or exceeded the current wages of the job he held when injured. Appellant remained entitled to medical benefits.

In a decision dated September 9, 1998, an Office hearing representative affirmed the termination of appellant's compensation. The hearing representative found that because appellant began working eight hours a day at the same rate of pay as his date-of-injury job, he had no loss of wage-earning capacity.

The Board finds that the Office properly terminated appellant's continuing compensation.

It is well established that, once the Office accepts a claim, it has the burden of proof to justify termination or modification of compensation benefits.¹ After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.²

As used in the Federal Employees' Compensation Act,³ the term "disability" means incapacity, because of employment injury, to earn the wages that the employee was receiving at the time of injury.⁴ Disability is not synonymous with physical impairment, which may or may not result in an incapacity to earn wages.⁵ An employee who has a physical impairment causally related to his federal employment, but who nonetheless has the capacity to earn the wages he was receiving at the time of injury, has no disability as that term is used in the Act and is not entitled to compensation for loss of wage-earning capacity.⁶

The record establishes that appellant returned to full-time work on January 13, 1998 at the same pay rate as his date-of-injury job. Notwithstanding any physical impairment he may have as a result of his accepted employment injury, appellant's capacity to earn the same wages he was receiving at the time of his injury means he has no disability under the Act and is not entitled to compensation for loss of wage-earning capacity. The Office has met its burden of proof.

¹ *Harold S. McGough*, 36 ECAB 332 (1984).

² *Vivien L. Minor*, 37 ECAB 541 (1986); *David Lee Dawley*, 30 ECAB 530 (1979); *Anna M. Blaine*, 26 ECAB 351 (1975).

³ 5 U.S.C. §§ 8101-8193.

⁴ *Richard T. DeVito*, 39 ECAB 668 (1988); *Frazier V. Nichol*, 37 ECAB 528 (1986); *Elden H. Tietze*, 2 ECAB 38 (1948); 20 C.F.R. § 10.5(17).

⁵ See *Fred Foster*, 1 ECAB 21 at 24-25 (1947) (finding that the Act provides for the payment of compensation in disability cases upon the basis of the impairment in the employee's capacity to earn wages, and not upon physical impairment as such).

⁶ See *Gary L. Loser*, 38 ECAB 673 (1987) (although the evidence indicated that the claimant had sustained a permanent impairment of his legs because of work-related thrombophlebitis, it did not demonstrate that his condition prevented him from returning to his work as a chemist or caused any incapacity to earn the wages he was receiving at the time of injury).

The September 9, 1998 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, DC
September 18, 2000

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

A. Peter Kanjorski
Alternate Member